

**Introduced by Senator Blakeslee**

February 18, 2011

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An act to ~~amend Section 3041 of the Penal Code~~ add Section 4139 to the Welfare and Institutions Code, relating to ~~inmates~~ state hospitals.

LEGISLATIVE COUNSEL'S DIGEST

SB 796, as amended, Blakeslee. ~~Inmates; parole.~~ State hospitals: prohibited items: misdemeanor penalty.

Existing law provides for state mental hospitals for the treatment of mentally disordered persons. Existing law places these hospitals under the jurisdiction of the State Department of Mental Health, and authorizes the department to adopt uniform rules and regulations regarding the conduct and management of these facilities, including prohibiting patients from possessing certain items.

This bill would make the possession with the intent to deliver, or delivery, to a patient in a state hospital any item that has been prohibited for possession by a patient either by statute or by regulation a misdemeanor, punishable by a fine not to exceed \$5,000 for each item. The bill would also require the confiscation from a visitor of an item prohibited for possession by a patient if discovered upon being searched or subjected to a metal detector and would require, unless the item is held as evidence, the return of the item the same day.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Existing law provides that, one year prior to the minimum eligible parole release date of an inmate serving an indeterminate sentence, a panel of 2 or more commissioners or deputy commissioners of the Board of Parole Hearings shall meet with the inmate and set a parole release date, as specified. Existing law provides that in the event of a tie vote, the matter shall be referred to the board for an en banc review limited to the record, as specified, that was before the panel that rendered the tie vote. Existing law requires the board to vote, upon the en banc review of the record, to either grant or deny parole and render a statement of decision. Existing law requires the board to separately state reasons for its decision to grant or deny parole and requires that the commissioners involved in the tie vote be recused from consideration of the matter in the en banc review.~~

~~This bill would make nonsubstantive changes to a provision on the subject of parole.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 4139 is added to the Welfare and
- 2     Institutions Code, to read:
- 3     4139. (a) Except as otherwise authorized by law, or when
- 4     authorized by the director of the state hospital, and except as
- 5     provided in subdivision (b), a person who possesses with the intent
- 6     to deliver, or delivers, to a patient in a state hospital any item that
- 7     has been prohibited for possession by a patient either by statute
- 8     or by regulation is guilty of a misdemeanor, punishable by a fine
- 9     not to exceed five thousand dollars (\$5,000) for each item.
- 10    (b) If a person visiting a patient in a state hospital, upon being
- 11    searched or subjected to a metal detector, is found to be in
- 12    possession of an item prohibited for patient possession, the item
- 13    shall be subject to confiscation but shall be returned on the same
- 14    day the person visits the inmate or ward, unless the item is held
- 15    as evidence in a case where the person is cited for a violation of
- 16    subdivision (a). If, upon investigation, it is determined that no
- 17    prosecution will take place, the item shall be returned to the owner
- 18    at the owner's expense. Notice of this provision shall be posted in

1 *all areas where visitors are searched prior to visitation with a*  
2 *patient.*

3 *SEC. 2. No reimbursement is required by this act pursuant to*  
4 *Section 6 of Article XIII B of the California Constitution because*  
5 *the only costs that may be incurred by a local agency or school*  
6 *district will be incurred because this act creates a new crime or*  
7 *infraction, eliminates a crime or infraction, or changes the penalty*  
8 *for a crime or infraction, within the meaning of Section 17556 of*  
9 *the Government Code, or changes the definition of a crime within*  
10 *the meaning of Section 6 of Article XIII B of the California*  
11 *Constitution.*

12 ~~SECTION 1. Section 3041 of the Penal Code is amended to~~  
13 ~~read:~~

14 ~~3041. (a) In the case of an inmate sentenced pursuant to any~~  
15 ~~provision of law, other than Chapter 4.5 (commencing with Section~~  
16 ~~1170) of Title 7 of Part 2, the Board of Parole Hearings shall meet~~  
17 ~~with each inmate during the third year of incarceration for the~~  
18 ~~purposes of reviewing the inmate's file, making recommendations,~~  
19 ~~and documenting activities and conduct pertinent to granting or~~  
20 ~~withholding postconviction credit. One year prior to the inmate's~~  
21 ~~minimum eligible parole release date, a panel of two or more~~  
22 ~~commissioners or deputy commissioners shall again meet with the~~  
23 ~~inmate and shall normally set a parole release date as provided in~~  
24 ~~Section 3041.5. No more than one member of the panel shall be a~~  
25 ~~deputy commissioner. In the event of a tie vote, the matter shall~~  
26 ~~be referred for an en banc review of the record that was before the~~  
27 ~~panel that rendered the tie vote. Upon en banc review, the board~~  
28 ~~shall vote to either grant or deny parole and render a statement of~~  
29 ~~decision. The en banc review shall be conducted pursuant to~~  
30 ~~subdivision (e). The release date shall be set in a manner that will~~  
31 ~~provide uniform terms for offenses of similar gravity and~~  
32 ~~magnitude with respect to their threat to the public, and that will~~  
33 ~~comply with the sentencing rules that the Judicial Council may~~  
34 ~~issue and any sentencing information relevant to the setting of~~  
35 ~~parole release dates. The board shall establish criteria for the setting~~  
36 ~~of parole release dates and in doing so shall consider the number~~  
37 ~~of victims of the crime for which the inmate was sentenced and~~  
38 ~~other factors in mitigation or aggravation of the crime. At least~~  
39 ~~one commissioner of the panel shall have been present at the last~~  
40 ~~preceding meeting, unless it is not feasible to do so or where the~~

1 last preceding meeting was the initial meeting. Any person on the  
2 hearing panel may request review of any decision regarding parole  
3 for an en banc hearing by the board. In case of a review, a majority  
4 vote in favor of parole by the board members participating in an  
5 en banc review is required to grant parole to any inmate.

6 (b) ~~The panel or the board, sitting en banc, shall set a release~~  
7 ~~date unless it determines that the gravity of the current convicted~~  
8 ~~offense or offenses, or the timing and gravity of current or past~~  
9 ~~convicted offense or offenses, is such that consideration of the~~  
10 ~~public safety requires a more lengthy period of incarceration for~~  
11 ~~this individual, and that a parole date, therefore, cannot be fixed~~  
12 ~~at this meeting. After the effective date of this subdivision, any~~  
13 ~~decision of the parole panel finding an inmate suitable for parole~~  
14 ~~shall become final within 120 days of the date of the hearing.~~  
15 ~~During that period, the board may review the panel's decision.~~  
16 ~~The panel's decision shall become final pursuant to this subdivision~~  
17 ~~unless the board finds that the panel made an error of law, or that~~  
18 ~~the panel's decision was based on an error of fact, or that new~~  
19 ~~information should be presented to the board, any of which when~~  
20 ~~corrected or considered by the board has a substantial likelihood~~  
21 ~~of resulting in a substantially different decision upon a rehearing.~~  
22 ~~In making this determination, the board shall consult with the~~  
23 ~~commissioners who conducted the parole consideration hearing.~~  
24 ~~No decision of the parole panel shall be disapproved and referred~~  
25 ~~for rehearing except by a majority vote of the board, sitting en~~  
26 ~~banc, following a public meeting.~~

27 (c) ~~For the purpose of reviewing the suitability for parole of~~  
28 ~~those inmates eligible for parole under prior law at a date earlier~~  
29 ~~than that calculated under Section 1170.2, the board shall appoint~~  
30 ~~panels of at least two persons to meet annually with each inmate~~  
31 ~~until the time the person is released pursuant to proceedings or~~  
32 ~~reaches the expiration of his or her term as calculated under Section~~  
33 ~~1170.2.~~

34 (d) ~~It is the intent of the Legislature that, during times when~~  
35 ~~there is no backlog of inmates awaiting parole hearings, life parole~~  
36 ~~consideration hearings, or life rescission hearings, hearings will~~  
37 ~~be conducted by a panel of three or more members, the majority~~  
38 ~~of whom shall be commissioners. The board shall report monthly~~  
39 ~~on the number of cases where an inmate has not received a~~  
40 ~~completed initial or subsequent parole consideration hearing within~~

1 30 days of the hearing date required by subdivision (a) of Section  
2 3041.5 or paragraph (2) of subdivision (b) of Section 3041.5, unless  
3 the inmate has waived the right to those timeframes. That report  
4 shall be considered the backlog of cases for purposes of this  
5 section, and shall include information on the progress toward  
6 eliminating the backlog, and on the number of inmates who have  
7 waived their right to the above timeframes. The report shall be  
8 made public at a regularly scheduled meeting of the board and a  
9 written report shall be made available to the public and transmitted  
10 to the Legislature quarterly.

11 (e) For purposes of this section, an en banc review by the board  
12 means a review conducted by a majority of commissioners holding  
13 office on the date the matter is heard by the board. An en banc  
14 review shall be conducted in compliance with the following:

15 (1) The commissioners conducting the review shall consider  
16 the entire record of the hearing that resulted in the tie vote.

17 (2) The review shall be limited to the record of the hearing. The  
18 record shall consist of the transcript or audiotape of the hearing,  
19 written or electronically recorded statements actually considered  
20 by the panel that produced the tie vote, and any other material  
21 actually considered by the panel. New evidence or comments shall  
22 not be considered in the en banc proceeding.

23 (3) The board shall separately state reasons for its decision to  
24 grant or deny parole.

25 (4) A commissioner who was involved in the tie vote shall be  
26 recused from consideration of the matter in the en banc review.